

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A REVISION
TO A SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT GRANTED
BY CITY OF SEATTLE TO
CONDOMINIUM BUILDERS, INC.,

MARY MCCOLL NEILSON,

Appellant,

v.

CITY OF SEATTLE and
CONDOMINIUM BUILDERS, INC.,

Respondents,

v.

LOCKHAVEN MARINA, INC.,

Intervenor.

SHB No. 85-3

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, a request for review of a revision to a shoreline substantial development permit granted by the City of Seattle to Condominium Builders, Inc., came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk, Chairman, and Gayle Rothrock, Wick

Dufford, and Rodney M. Kerslake, Members, convened at Seattle, Washington, on July 16, 1985. Administrative Appeals Judge William A. Harrison presided.

Appellant Mary McColl Neilson appeared and represented herself. Respondent Condominium Builders, Inc., appeared by its attorney, Peter L. Buck. Respondent City of Seattle appeared by Gordon Crandall, Assistant City Attorney. Intervenor Lockhaven Marina, Inc., appeared by its attorney J. Richard Aramburu. Reporter Laura D. Rawlins recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises on the shore of the Lake Washington Ship Canal opposite the Hiram M. Chittenden Locks in Seattle.

II

In 1977, respondent Condominium Builders, Inc., (CBI) drew up plans for a 40-unit condominium for the site. These plans included balconies on the waterward side which wrap around the ends of the building. The CBI application for a shoreline substantial development permit, by contrast, showed only balconies on the waterward side and not on the ends. The application was approved by Seattle in 1977. The length of the approved condominium was 280 feet. Had the application included the end balconies (6 feet wide on each end), the

1 length of the condominium would be 292 feet.

2 III

3 The 1977 shoreline permit granted by Seattle was appealed by
4 Margaret Coughlin to this Board. We reviewed, then, the Seattle
5 master program requirements for a view corridor from the street,
6 across the lot, to the water. We upheld Seattle's determination that
7 the condominium and related marina site should be considered as one
8 lot for this purpose. We found the average lot width to be 690 feet
9 and applied the 35 percent requirement of the master program to
10 conclude that the view corridor must be 241 feet. Coughlin v. City of
11 Seattle and Condominium Builders, Inc., SHB No. 77-18 (1977) aff'd
12 Court of Appeals (Div. II) Unpublished Opinion No. 3592-II.

13 IV

14 The condominium site was subsequently divided from the marina
15 site. The respective owners of each site apparently agreed that the
16 690-foot width of both sites, less the 241-foot view corridor, leaves
17 449 feet of buildable area or 280 feet for the condominium, as
18 proposed, and 169 feet for development on the marina site.

19 V

20 In 1979, the Seattle master program was amended [Section
21 24.60.395(F)] to impose setback requirements on multi-family
22 residences whereas it had previously been interpreted by the City to
23 contain setback requirements only for single family residences in the
24 context of this case.

25
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1 VI

2 In 1980, CBI obtained a building permit from Seattle for the
3 condominium with balconies on the ends. The plans used for the
4 building permit were those drawn up in 1977. The plans were checked
5 and approved by various City departments including "shorelines."
6 Shortly thereafter the condominium was constructed with the balconies
7 on the ends.

8 VII

9 In 1983, the Seattle master program was amended to allow the City
10 to modify view corridor requirements:

11 ...if it is determined that the intent to preserve
12 views cannot be met by strict application of the
requirements or one of the following conditions apply:

- 13 1. There is no available clear view of the water
from the street.
14 2. Existing development effectively blocks any
possible views from the street.
15 3. The shape of the lot is unusual or irregular.

16 In making the determination of whether to modify the
requirements, the Director shall consider the
17 following factors:

- 18 1. The direction of predominant views of the water.
19 2. The extent of existing public view corridors,
such as parks or street ends in the immediate
vicinity.
20 3. The availability of actual views of the water.
21 4. The percent of the site which would be devoted to
view corridor if the requirements were strictly
applied.
22 5. Extreme irregularity in the shape of the lot or
the shoreline topography precludes effective
application of the requirements.
23 Section 24.60.395(E). .

24 VIII

25 The balconies on the ends are constructed with open railings. No

1 significant view blockage or other adverse environmental impact
2 results from the presence of these balconies. The use of the
3 condominium is not changed by the presence of these balconies, nor are
4 the end balconies closer to the shoreline than the other balconies.

5 IX

6 The City, upon learning that the end balconies were not included
7 in CBI's 1977 shoreline application, required CBI to apply for
8 revision of that permit to include these balconies. CBI did so in
9 1984. Seattle approved the revision on January 18, 1985. In doing
10 so, Seattle also reduced the required view corridor by the twelve feet
11 taken up by the end balconies.

12 X

13 Appellant Mary McColl Neilson, who resides in an end unit of the
14 neighboring condominium requested review of this Board on February 5,
15 1985.

16 XI

17 Any Conclusion of Law which is deemed a Finding of Fact is hereby
18 adopted as such.

19 From these Findings of Fact the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 Respondent, CBI, contends that no revision of its 1977 shoreline
23 permit is necessary to authorize the end balconies at issue. We
24 disagree. An application for a shoreline permit must disclose
25 "dimensions and locations of proposed structures." WAC

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1 173-14-110(7). CBI's application and 1977 shoreline permit addressed
2 a condominium 280 feet in length. The balconies at issue increase
3 that length to 292 feet. Seattle acted properly in requiring revision
4 of the 1977 shoreline permit.

5 II

6 The revision approved by Seattle is consistent with WAC
7 173-14-064(2)(b) in that it permits a minor addition to an existing
8 structure and not a new structure. Moreover the height, lot coverage
9 and related concerns of that rule were not shown to be exceeded. The
10 specific matter of setbacks mentioned in the rule is addressed below
11 at Conclusion of Law IV.

12 III

13 The revision approved by Seattle is consistent with WAC
14 173-14-064(2)(e) in that the end balconies at issue have no additional
15 significant adverse environmental impact.

16 IV

17 The condominium, excepting the end balconies, lawfully existed
18 prior to amendment of the Seattle master program imposing requirements
19 that such structures be set back from the shoreline. (Section
20 24.60.395, 1979.) Therefore, although it does not comply with setback
21 requirements now in effect, it is a "nonconforming use." See American
22 Law of Zoning, R. Anderson, Section 6.01 (Second Edition). In Keller
23 v. Bellingham, 92 Wn.2d 726, 600 P.2d 1276 (1979) the Supreme Court
24 ruled that intensification of a nonconforming use is permissible where
25 the nature and character of the use is unchanged and substantially the

1 same facilities are used. It went on to state:

2 The test is whether the intensified use is 'different
3 in kind' from the nonconforming use in existence when
the zoning ordinance was adopted.

4 Here, the addition of the end balconies brings no change in the nature
5 or character of the nonconforming use and brings no significant
6 adverse effect to the neighborhood or surrounding environment. We
7 conclude that the end balconies merely intensify the lawful
8 nonconforming condominium, and are not precluded by the master program
9 setback amendments at Section 24.60.395(F).

10 V

11 Seattle's reduction of the view corridor by twelve feet to
12 accommodate the largely see-through balconies is de minimis. The
13 alternative would have been to subtract that twelve feet from the
14 buildable length relied upon by intervenor Lockhaven Marina, Inc.,
15 following our decision in Coughlin, supra. It is speculative whether
16 this would have resulted in any clear view owing to the existing
17 covered moorage on the marina site. Appellant has not shown that the
18 modification of view corridor was inconsistent with Section
19 24.60.395(E) of the master program.

20 VI

21 Any Finding of Fact which is deemed a Conclusion of Law is hereby
22 adopted as such.

23 From these Conclusions of Law the Board enters this
24
25

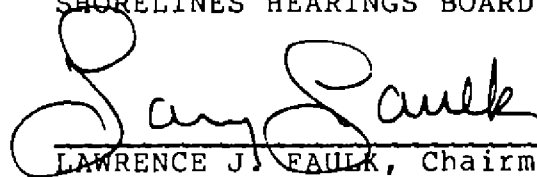
26 FINAL FINDINGS OF FACT,
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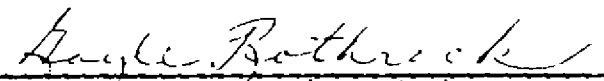
ORDER

The revision of shoreline substantial development permit No. 77-05 granted by the City of Seattle to Condominium Builders, Inc., is hereby affirmed.


DONE at Lacey, Washington, this 22nd day of August, 1985.

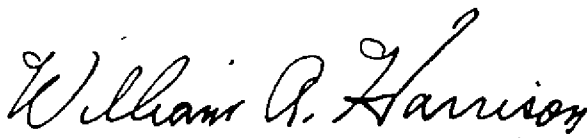
SHORELINES HEARINGS BOARD

 8/22/85
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WICK DUFFORD, Lawyer Member


RODNEY M. KERSLAKE, Member


WILLIAM A. HARRISON
Administrative Appeals Judge